

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

ANGELA M. DUNBAR,)	
)	
Plaintiff,)	
vs.)	CIVIL ACTION FILE
)	NO.
JOHN J. LAND IV, DPM, d/b/a)	
ACTIVE FOOT CARE,)	
)	
Defendant.)	
_____)	

NOTICE OF REMOVAL

**TO: THE JUDGES, UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

Pursuant to 28 U.S.C. §§ 1441 and 1446(b), Defendant JOHN J. LAND, IV, D.P.M. [misnamed in Plaintiff's Complaint and in the style of the case], hereby removes this action, Angela M. Dunbar v. John J. Land, IV, DPM, d/b/a Active Foot Care, Civil Action File No. 10CI2716-B (the "State Court Action") from the Superior Court of Whitfield County to the United States District Court for the Northern District of Georgia, Rome Division. Removal is based upon the following:

JURISDICTIONAL BASIS FOR REMOVAL

1.

On September 29, 2010, Plaintiff filed suit against Defendant John J. Land, VI, DPM, d/b/a Active Foot Care and Foot & Ankle Surgery Center alleging medical malpractice relating to Dr. Land's care of the Plaintiff. Dr. Land acknowledged service of the Summons and Complaint on October 20, 2010. A genuine copy of the Complaint and all pleadings in the State Court Action are attached hereto as Exhibit "1."

2.

This Court has federal diversity jurisdiction over this action under 28 USC §§ 1332, 1446(b) because: (1) the named plaintiff and remaining named defendant are completely diverse; and (2) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

3.

Georgia limited liability company and prior defendant Foot & Ankle Surgery Center was dismissed on December 16, 2010, a genuine copy of which is attached hereto as Exhibit "2." Said order is the order from which it was first ascertained that the case is one which had become removable pursuant to 28 USC § 1446(b).

4.

Plaintiff is a citizen of the State of Georgia.

5.

Defendant John J. Land, VI, D.P.M. (incorrectly identified John J. Land, DPM, d/b/a Active Foot Care) is a citizen of the state of Tennessee. See Declaration of Laura D. Eschleman, Paragraph 3, attached hereto as Exhibit “3.”

6.

The matter in controversy, exclusive of interests and costs, exceeds the sum of \$75,000.00. While Plaintiff’s Complaint does not claim a specific amount of damages, the Complaint alleges damages for doctor, pharmaceutical, hospital and other medical expenses (\$28,217.89 to date), for lost wages (\$19,773.72 to date) with future loss of ability to work and earn money, for breach of contract to provide physician services in a workmanlike manner and for punitive damages. Where the complaint does not claim a specific amount of damages, removal from state court is proper if it is facially apparent from the complaint that the amount exceeds the jurisdictional requirement. Williams v. Best Buy Co., Inc., 269 F.3d 1316, 1319 (11th Cir. 2001)(“If the jurisdictional amount is not facially apparent from the complaint, the court should look to the notice of removal and may require

evidence relevant to the amount in controversy at the time the case was removed.”). See Plaintiff’s Complaint, Ex. 1.

TIMELINESS OF REMOVAL

7.

Georgia limited liability company and prior defendant Foot & Ankle Surgery Center was dismissed on December 16, 2010. See Ex. 2. As a Georgia company, Foot & Ankle Surgery Center prevented complete diversity as stated in the initial pleading. Thus, the order dismissing Foot & Ankle Surgery Center is the order from which it was first ascertained that the case is one which had become removable pursuant to 28 USC § 1446(b). The deadline for removing this case is January 18, 2011.¹

8.

This Notice of Removal is timely as it was filed within thirty (30) days of service or receipt of the order dismissing prior defendant Foot & Ankle Surgery Center and within one (1) year of commencement of the State Court Action. See 28 USC § 1446(b).

¹ The 30th day after receipt of the order dismissing prior defendant Foot & Ankle Surgery Center is Saturday, January 15, 2011. Pursuant to Fed. R. Civ. P. (a)(1)(c), the deadline “continues to run until” the next non-business day and non-legal holiday (i.e., Tuesday, January 18, 2011).

PROCEDURAL REQUIREMENTS FOR REMOVAL

9.

Plaintiff filed the State Court Action in the Superior Court of Whitfield County, and the United States District Court for the Northern District of Georgia, Rome Division, embraces Whitfield County. 28 USC § 90(a)(3). Thus, this Court is a proper venue for this action.

10.

A copy “of all process, pleadings and orders” filed in this action is attached to this Notice of Removal as required by 28 USC § 1446(a). See Ex. 1.

11.

John J. Land, IV, D.P.M. will promptly file written notice of this removal, in substantially the form attached hereto as Exhibit “4” (without exhibits), with the Clerk of Superior Court for Whitfield County pursuant to 28 USC § 1446(d).

WHEREFORE, John J. Land, IV, D.P.M. hereby gives notice of the removal of this case to the United States District Court for the Northern District of Georgia, Rome Division.

This 20th day of December, 2010.

NALL & MILLER, LLP

By: /x/ Laura D. Eschleman
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ATTORNEYS FOR DEFENDANT
JOHN J. LAND, IV, D.P.M.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served all counsel of record in the foregoing matter with a copy of the foregoing **NOTICE OF REMOVAL** by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon to:

Warren N. Coppedge, Jr., Esq.
Coppedge & Evans, P.C.
508 South Thornton Avenue
Dalton, Georgia 30720

Attorney for Plaintiff

This 20th day of December, 2010.

NALL & MILLER, LLP

By: /x/ Laura D. Eschleman
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